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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**In re:**

**PG&E CORPORATION,**

**- and -**

**PACIFIC GAS AND ELECTRIC  
COMPANY,**

**Debtors.**

- ☐ Affects PG&E Corporation  
☒ Affects Pacific Gas and Electric  
Company  
☐ Affects both Debtors

*\* All papers shall be filed in the Lead  
Case, No. 19-30088 (DM).*

Case No. 19-30088 (DM)  
Chapter 11  
(Lead Case) (Jointly Administered)

**DEBTOR'S MOTION PURSUANT TO FED. R.  
BANKR. P. 4001(d) TO APPROVE  
STIPULATION BETWEEN DEBTOR PACIFIC  
GAS AND ELECTRIC COMPANY AND  
KATHLEEN PELLEY AND ALLAN PELLEY  
REGARDING MODIFICATION OF  
AUTOMATIC STAY**

**Objection Deadline:** October 2, 2019  
4:00 pm (Pacific Time)

**No hearing requested absent timely objection. If  
timely objection is filed, hearing reserved for:**

Date: October 22, 2019  
Time: 9:30 a.m. (Pacific Time)  
Place: United States Bankruptcy Court  
Courtroom 17, 16th Floor  
San Francisco, CA 94102

PG&E Corporation and Pacific Gas and Electric Company (the “**Utility**”), as debtors and debtors in possession (each, a “**Debtor**,” and collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this Motion (the “**Motion**”), pursuant to section 362(d) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 4001(d) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 4001-1 and 9014-1(b)(3) of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Northern District of California (the “**Bankruptcy Local Rules**”), for approval of an agreement between the Utility and Kathleen Pelley and Allan Pelley (together, the “**Pelleys**,” and, together with the Utility, the “**Parties**”), as embodied in the *Stipulation Between Debtor and Kathleen Pelley and Allan Pelley Regarding Modification of the Automatic Stay* (the “**Stipulation**”), a true copy of which is attached as **Exhibit A**, by issuance of an order in the form attached hereto as **Exhibit B** (the “**Proposed Order**”). In support of the Motion, the Debtors submit the Declaration of Jana Contreras (the “**Contreras Declaration**”) and the Declaration of Joseph Echols (the “**Echols Declaration**”), both filed contemporaneously herewith.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. JURISDICTION

The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D. Cal.), and Bankruptcy Local Rule 5011-1(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### II. BACKGROUND

On January 29, 2019 (the “**Petition Date**”), the Debtors commenced these Chapter 11 Cases. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

On February 12, 2019, the United States Trustee (the “**U.S. Trustee**”) appointed an Official Committee of Unsecured Creditors (the “**Creditors Committee**”). On February 15, 2019, the U.S. Trustee appointed an Official Committee of Tort Claimants (the “**Tort Claimants Committee**,” and, together with the Creditors Committee, the “**Committees**”).

Additional information regarding the circumstances leading to the commencement of the Chapter 11 Cases and information regarding the Debtors’ businesses and capital structure is set forth in the *Amended Declaration of Jason P. Wells in Support of the First Day Motions and Related Relief* [Docket No. 263].

### III. THE STIPULATION

Since on or around December 30, 1998, Kathleen Pelley has had an ownership interest in the real property commonly known as 3906 Pennsylvania Avenue, Eureka, California, and more particularly identified as Assessor’s Parcel Number 016-172-007 (the “**3906 Property**”). Since on or around January 10, 2017, Kathleen Pelley has also been the owner in fee simple of an undivided fifty percent interest the real property commonly known as 3970 Pennsylvania Avenue, Eureka, California, and more particularly identified as Assessor’s Parcel Number 016-172-008 (the “**3970 Property**,”

1 and, together with the 3906 Property, the “**Property**”). Since on or around January 10, 2017, Allan  
2 Pelley has been the owner in fee simple of the other undivided fifty percent interest the 3970 Property.

3 Pursuant to an easement agreement created on August 23, 1945 and recorded on August  
4 28, 1945 in the Official Records of the Humboldt County at Book 276 of Deeds, page 43 (the “**1945**  
5 **Easement**”), the Utility owns an easement that gives it the right to install and use an underground gas  
6 transmission pipeline with necessary valves and other appliances within a ten foot wide strip of land  
7 located on the Property. Pursuant to an easement agreement dated January 11, 1958 and recorded on  
8 January 24, 1958 in the Official Records of the Humboldt County at Volume 476, page 225 (the “**1958**  
9 **Easement**,” and, collectively with the 1945 Easement, the “**Easement**”), the Utility has the right to  
10 install and use an underground gas transmission pipeline, with necessary valves and other appliances,  
11 within a ten foot wide strip of land “contiguous to and northerly of the northern boundary line” of the  
12 1945 Easement.

13 The Property contains certain trees that the Pelleys have caused or permitted to be  
14 planted and grow and maintained on the land subject to the Easement (the “**Incompatible Trees**”).  
15 Due to various factors, such as their size, species, and distance to the pipeline, the Incompatible Trees  
16 interfere with the Utility’s use of the land subject to the Easement in ways including, but not limited  
17 to, potentially damaging the Utility’s underground pipe and pipeline, impeding maintenance crews,  
18 and interfering with inspections required by regulatory authorities. Since 2016, the Utility has been  
19 working with the Pelleys to obtain their cooperation to remove the Incompatible Trees, without  
20 success. Accordingly, on or about March 12, 2019, the Utility filed a complaint (the “**Complaint**”) in the Humboldt County Superior Court (the “**Superior Court**”) seeking declaratory and injunctive  
21 relief relating to the Utility’s enforcement of the Easement across the Property (the “**Humboldt**  
22 **Action**”).

23  
24 On May 23, 2019, the Pelleys filed a cross-complaint against the Utility in the  
25 Humboldt Action for quiet title and declaratory relief concerning the same general facts and  
26 circumstances as the Complaint (the “**Cross-Complaint**”). On June 21, 2019, the Debtors filed a  
27 *Notice of Stay of Proceedings* in the Humboldt Action based on these Chapter 11 Cases, which  
28 operated to stay proceedings on the Cross-Complaint, but not on the Complaint.

1 The Utility has determined that the continuation of the Humboldt Action is in the best  
2 interests of its estate. Accordingly, the Stipulation provides that the automatic stay shall be modified  
3 to permit the Pelleys to litigate the Cross-Complaint against the Debtor in the Superior Court and to  
4 defend themselves against the Complaint. Furthermore, to the extent applicable, the Stipulation  
5 modifies the automatic stay to permit the Debtor to continue to litigate the Complaint in the Superior  
6 Court and defend itself against the Cross-Complaint. The Stipulation does not permit, and the  
7 automatic stay itself shall remain in effect with respect to, the enforcement by the Pelleys of any  
8 judgment they may obtain in their favor in the Humboldt Action.

9 **IV. BASIS FOR RELIEF REQUESTED**

10 Limited relief from the automatic stay as provided in the Stipulation is appropriate  
11 under section 362 of the Bankruptcy Code. Section 362(d)(1) authorizes a court to modify or terminate  
12 the stay for “cause.” The definition of “cause” for purposes of granting relief from stay “has no clear  
13 definition and is determined on a case-by-case basis.” *Christensen v. Tucson Estates, Inc. (In re*  
14 *Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990) (citation omitted). In determining whether  
15 such cause exists to permit an action to proceed in a non-bankruptcy forum, courts analyze the twelve  
16 factors set forth in *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984); *see also In re Roger*, 539 B.R.  
17 837, 844-45 (C.D. Cal. 2015); *In re Howrey LLP*, 492 B.R. 19, 24 (Bankr. N.D. Cal. 2013); *In re*  
18 *Plumberex Specialties Prods., Inc.*, 311 B.R. 551, 559 (Bankr. C.D. Cal. 2004). The twelve *Curtis*  
19 factors are: (1) whether the relief will result in partial or complete resolution of issues; (2) the lack of  
20 any connection with or interference with the bankruptcy case; (3) whether the foreign proceeding  
21 involves the debtor as a fiduciary; (4) whether a specialized tribunal has been established to hear the  
22 particular cause of action and whether the tribunal has expertise to hear such cases; (5) whether the  
23 debtor’s insurance carrier has assumed full financial responsibility for defending the litigation;  
24 (6) whether the action essentially involves third parties, and the debtor functions only as a bailee or  
25 conduit for the goods or proceeds in question; (7) whether the litigation in another forum would  
26 prejudice the interests of other creditors, the creditors’ committee and other interested parties;  
27 (8) whether the judgment claim arising from the foreign action is subject to equitable subordination;  
28 (9) whether movant’s success in the foreign proceeding would result in a judicial lien avoidable by the

1 debtor under section 522(f); (10) the interests of judicial economy and the expeditious and economical  
2 determination of litigation for the parties; (11) whether the foreign proceedings have progressed to a  
3 point where the parties are prepared for trial; and (12) the impact of the stay and the “balance of hurt.”

4           The applicable *Curtis* factors all weigh heavily in favor of lifting the stay in the  
5 Humboldt Action. First and foremost, the Utility has a business need—namely, the removal of the  
6 Incompatible Trees—to confirm and protect, as promptly as possible, its rights under the Easement;  
7 and to do so it must litigate its Complaint in the Humboldt Action. Allowing the Pelleys to litigate  
8 their Cross-Complaint at the same time in the same action will not prejudice the Debtor’s estates or  
9 other creditors. To the contrary, litigating the entire Humboldt Action will save the Utility’s estate  
10 time and money: the Complaint and Cross-Complaint relate to the same underlying issues and would  
11 involve the same or similar discovery and motion practice. It would be inefficient to litigate only the  
12 Utility’s claims now and to relitigate the Pelley’s claims in this Court through the claims process. The  
13 Utility also seeks to avoid the time and expense associated with a contested motion for relief from the  
14 stay which, absent the Stipulation, the Pelleys could be expected to bring, asserting not only the  
15 foregoing grounds, but also that permitting the Utility to prosecute its Complaint in the Humboldt  
16 Action while restraining them from litigating their Cross-Complaint would be inequitable. For these  
17 reasons, the Stipulation provides material benefits to the Debtor and its estate at little cost, has been  
18 authorized by the Debtor in the exercise of its business judgment, and is in the best interest of the  
19 Debtor, its estate, and its creditors.

20       **V.           NOTICE**

21           Notice of motions to approve agreements to modify or terminate the automatic stay is  
22 governed by Bankruptcy Rule 4001(d)(1)(C), Bankruptcy Local Rule 9014-1(b)(3), and the *Second*  
23 *Amended Order Implementing Certain Notice and Case Management Procedures* entered by this  
24 Court on May 13, 2019 [Docket No. 1996].

25           Bankruptcy Rule 4001(d)(1)(C) specifies that notice of a motion such as this must be  
26 served on any official committee and on any other entity that the Court directs. Notice here will be  
27 given much more broadly than as required by that Rule: notice of this Motion will be provided to  
28 (1) the Office of the United States Trustee for Region 17 (Attn: Andrew R. Vara, Esq. and Timothy

1 Laffredi, Esq.); (2) counsel to the Creditors Committee; (3) counsel to Tort Claimants Committee;  
2 (4) the Securities and Exchange Commission; (5) the Internal Revenue Service; (6) the Office of the  
3 California Attorney General; (7) the California Public Utilities Commission; (8) the Nuclear  
4 Regulatory Commission; (9) the Federal Energy Regulatory Commission; (10) the Office of the  
5 United States Attorney for the Northern District of California; (11) counsel for the agent under the  
6 Debtors' debtor in possession financing facility; and (12) those persons who have formally appeared  
7 in these Chapter 11 Cases and requested service pursuant to Bankruptcy Rule 2002, or who, by virtue  
8 of their counsel being registered electronic filers in this District, automatically receive this and other  
9 papers through the Court's ECF system. The Debtor respectfully submits that no further notice is  
10 required. No previous request for the relief sought herein has been made by the Debtor to this or any  
11 other court.

12 **WHEREFORE**, the Debtors respectfully request entry of an order granting the relief  
13 requested herein and such other and further relief as the Court may deem just and appropriate.

14 Dated: September 11, 2019

**WEIL, GOTSHAL & MANGES LLP**

**KELLER & BENVENUTTI LLP**

15 By: /s/Peter J. Benvenutti  
16 Peter J. Benvenutti

17 *Attorneys for Debtors and Debtors in Possession*  
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